No. 405.

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HAROLD B. WILLEY,

In the

Supreme Court of the United States

OCTOBER TERM, 1955.

GRIMES & HAUER, INC.,

Petitioner,

vs.

SAM POLLOCK,
Individually and as International Representative of Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

BRIEF FOR RESPONDENTS IN OPPOSITION.

MORTIMER RIEMER,
THURLOW SMOOT,
514 Bulkley Building,
Cleveland 15, Ohio,
Counsel for Respondents.

October, 1955.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-8947

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OPINIONS BELOW.

The opinion of the trial court is reported at 51 Ohio Opinions 142, 115 N. E. 2d 59 (App. A of Petition). The opinion of the Court of Appeals, pertinent here, is reported at 54 Ohio Opinions 433, 119 N. E. 2d 889 (App. C of Petition). The opinion of the Ohio Supreme Court is reported at 163 Ohio St. 372, 127 N. E. 2d 203 (App. D of Petition).

JURISDICTION.

The judgment of the Ohio Supreme Court was rendered May 25, 1955. Application for rehearing was denied June 29, 1955. The petition for a Writ of Certiorari was

filed on September 17, 1955. Respondents' request for an extension of time to file its brief in opposition was granted and time extended to November 15, 1955 by the Clerk of this Court. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3).

QUESTION PRESENTED.

Whether the national Labor Management Relations Act deprives a state court of jurisdiction to restrain peaceful picketing by a union of an employer engaged in interstate commerce and which conduct is in violation of the Act and whether its jurisdiction has been pre-empted by authority vested by the Congress in the National Labor Relations Board.

STATUTE INVOLVED.

The pertinent provisions of the Labor Management Relations Act, 1947, as amended, 61 Stat. 136 (29 U. S. C. 151 *et seq.*), are set forth in the Appendix hereto at pages 19 to 21.

STATEMENT OF THE CASE.

The Supreme Court of Ohio affirmed the decision of its Court of Appeals and found, in reliance upon *Garner v. Teamsters Union*, 346 U. S. 485, that the state court was without jurisdiction to enjoin respondents' peaceful picketing since the controversy in issue came within the provisions of the Act.

The subsidiary facts upon which the court below based its findings and conclusions are herein set forth.

The Respondent Local Union, herein called the Union, is affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL. The individual re-

spondents are officers and agents of the Union which has about 4,000 members in the Cleveland area employed under collective bargaining contracts with their employers (R. 105).

Petitioner, herein called the company, a Pennsylvania corporation, operates two retail stores, five leased concessions and a warehouse in Cleveland for the sale of cut-up poultry which it receives from its processing plants in Pennsylvania. The leased concessions are in the stores of the S. S. Kresge Co. (R. 55, 56).

In January 1952, representatives of the Union attempted to organize the company's employees and were referred to the district manager (R. 79, 103, 145, 152). In March 1952, union representative Pollock met company officials in Cleveland and outlined the advantages of a union contract suggesting methods of organization for the employees (R. 106, 127, 128). None of the employees were members of the Union. Jennings, the district manager, was concerned about problems which might arise if employees refused to join the Union (R. 27). Pollock explained that he would talk to those employees and they did not have to join the Union (R. 42, 43). Pollock showed Jennings two labor agreements then in effect in Cleveland and Jennings asked for a copy (R. 111). One was mailed to Jennings later that day which contained a standard union-shop provision requiring employee membership in the Union on the thirtieth day following the effective date of the agreement. Employees hired thereafter were required to become members "on and after the thirtieth (30th) day following the beginning of their employment" (Deft's. Exh. B; R. 177).

Nothing further occurred between the parties until December 1952, when Pollock wrote Jennings requesting another meeting (Pltf's. Exh. 1; R. 172). Jennings did not

reply to this letter and ignored requests to communicate or meet with Pollock (R. 147, 153). The Union then decided to picket the company's operations and picketing of one store commenced on February 6, 1953; the next day it was extended to a concession in one Kresge store; on February 14, to two other leased concessions; and, on February 21, to the company's second store (R. 112, 113). The picketing was peaceful at all times and no incidents arose. The trial court noted: "There has been no violence and only minor deviation from idyllic conduct. The bannering is truthful and the picketing must be conceded to be lawful in manner" (App. A of Petition, pp. 2a, 3a).

On February 10, 1952, Pollock visited the Kresge manager and explained the Union's dispute with the company. He stated that he had hoped that a meeting could be arranged with the company in order to obviate any further picketing and to minimize interference with the Kresge operations. The Kresge manager replied that he would just as soon remove the company's concession because he could put the space that it occupied to better use (R. 115). Pollock said that he did not want Kresge to break its lease because he was not "in business to organize anybody out of business"; his object was to improve working conditions and closing stores did not increase union membership (R. 115).

On February 10 and, four days after the picketing started, at a time when only one of the stores and one of the leased concessions were being picketed, and for the first time in the company's relations with its employees, it called them to a meeting in a downtown Cleveland hotel. There they were addressed by the company's vice-president and treasurer and offered individual written contracts of employment under the terms of which the company agreed to employ and the employees to work for a period

of three months at a fixed weekly wage or hourly rate of pay (Pltf's. Exh. 2; R. 33, 173, 174, 175). Picketing continued until enjoined by the trial court.

Based upon these facts, the company filed its petition in the Court of Common Pleas, alleging in part that the Union had entered into an unlawful combination and conspiracy to injure and destroy the company's business for the purpose of coercing the employer to in turn compel its employees to become members of the Union. It alleged that the picketing was unlawful because the Union did not represent a majority of the employees and it was nevertheless demanding that the employer enter into a contract which would require membership in the Union as a condition of continued employment or in the alternative force discharge of employees (R. 4, 7).

The employer alleged further that there was no "legitimate trade dispute" between it and the Union; that it had entered into written contracts of employment with individual employees and the Union's conduct would have the effect of terminating these private contracts which the employer had obtained (R. 7); the Union threatened to stop all deliveries of merchandise to Kresge's (R. 5) and this conduct constituted a secondary boycott, the purpose of which was to bring economic pressure upon Kresge to coerce it to terminate its lease with the company. It prayed for an injunction.

The Federal question involved was first raised by answer which denied the commission of any unlawful acts and pleaded that the Court of Common Pleas lacked jurisdiction over the subject matter of the controversy because it involved a labor dispute between the parties and the petition alleged conduct which constituted violations of Federal law, exclusive jurisdiction over which was lodged

in the National Labor Relations Board under the Act (R. 15).

By reply it was alleged that the Union's demand for a union-shop provision would force the breach of the private contracts of employment that the company had procured and that the mere presence of pickets for the purpose of forcing the employer to coerce employees into the Union was unlawful (R. 17, 18). The reply stated that the employer had not alleged violations of the Act, nor had it sought relief from the Board, but if the facts alleged constituted violations of the Act that would not divest Ohio of jurisdiction because of the violation of Ohio common law which flowed from the acts of respondents (R. 19).

JUDGMENTS OF THE COURTS BELOW.

The trial court granted an injunction (App. A of Petition, p. 3a). The Ohio Court of Appeals first affirmed (App. B of Petition, p. 7a) but on rehearing, following decision of this Court in *Garner v. Teamsters Union*, 346 U. S. 485, unanimously reversed on the latter authority (App. C of Petition, p. 9a). It is this latter judgment, from which petitioner appealed, which was affirmed by the Ohio Supreme Court in a holding that the State court was without jurisdiction to enjoin the picketing since the controversy came within the provisions of the Act, as it relates to unfair labor practices, and the petitioner must initially at least pursue its remedy before the Board (App. D of Petition, p. 15a).

ARGUMENT.

The judgment of Ohio which "comes to this Court bearing a weighty title of respect" (*International Brotherhood of Teamsters, etc. v. Hanke*, 339 U. S. 470, 475), has deprived petitioner of an injunction. The judgment was based upon a proper recognition of this Court's decisions in *Garner v. Teamsters Union*, 346 U. S. 485; *Capital Service, Inc. v. Labor Board*, 347 U. S. 501 and *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468.

The issue in the present case is no longer significant or doubtful as a matter of law. A federal question has been decided in accord with applicable decisions of this Court. Petitioner argues, however, that since it did not seek the intervention of the Board but charged a violation of Ohio law, it should not be deprived of its injunction because of the Board's exclusive jurisdiction to provide a remedy for the same conduct. The Ohio Supreme Court did not agree, obviously, believing that the controversy came within provisions of the Act "as it relates to unfair labor practices" and that decision was controlled by the *Garner* case and others it cited (App. D of Petition, p. 15a).

The Union engaged in peaceful picketing of the petitioner's stores and leased concessions although it did not number any of petitioner's employees as members. The Union's objective through peaceful methods was organization of employees and a signed contract. After four days of picketing by the Union individual written contracts of employment were entered into for the first time between the company and its employees. Then the petition was filed in Common Pleas Court alleging conduct which in more than one particular constitutes a violation of the Act.

The trial court held that the Union's objective was unlawful since it sought through a show of force to coerce

the company to compel its employees to join the Union or risk discharge for refusal to do so (App. A of Petition, p. 4a). The Court of Appeals at first affirmed without passing directly on the Federal question which had been raised. Subsequent to this Court's decision in *Garner*, reargument was had and the Court reversed in a unanimous opinion holding that:

> "* * *, in view of the factual and legal identity of the instant case with that of the *Garner* case, that the ruling of the Supreme Court of the United States in the latter case is applicable to and controlling in this case" (App. C of Petition, p. 12a).

The Supreme Court of Ohio affirmed the Court of Appeals (App. D of Petition). On these facts the decision of the Supreme Court was manifestly correct. There is no conflict of decision but on the contrary Ohio has given full faith to the controlling decisions of this Court. No important or novel question of Federal law is raised by the petitioner requiring decision of this Court.

I.

THE DECISION BELOW IS CORRECT.

Petitioner claims the lower court was in error for refusing to adopt the rule that in cases of peaceful picketing of interstate employers, state courts have the primary duty and responsibility to determine questions of jurisdiction and apply a state remedy for conduct which is a violation of the Act. In effect petitioner argues that it is entitled to a state court injunction and respondents have no right to deprive petitioner of its injunction because it did not allege a violation of the Act or seek the intervention of the National Labor Relations Board.

In reaching decision here the Court below was correct in applying and following *Garner*. Upon examination

it found the facts "similar" and the principle in legal theory the same. Petitioner's attempt to show factual distinction is not persuasive. In *Garner* the conduct violated a Pennsylvania statute. In the instant case petitioner claimed the Union violated the Ohio Constitution, Ohio statutes, breached private rights of employment and was contrary to Ohio decisional law (R. 3, 4, 7). The trial court found that the Union attempted "to coerce the employer to assist it in its efforts to organize" (Petition, p. 7a). Picketing to compel an employer to sign a contract containing an illegal union-security clause is engaging in an attempt to cause an employer to discriminate against employees in violation of Section 8(a)(3) and thereby in violation of Section 8(b)(2). *Amalgamated Meat Cutters and Butcher Workmen*, 81 NLRB 1052, 1055, 1059. The interference with contracts of employees constituted a violation of Section 8(b)(2) of the Act, 29 U. S. C. 158(b), because the Union without complying with statutory authorization procedures was picketing to compel union membership or else force discharge of employees. *International Union, United Mine Workers of America*, 83 NLRB 916, 917, 920. The Court of Appeals felt continued picketing would interfere with these contracts (Petition, p. 13a).

Whether the Union would have been found by the Board to have violated Section 8(b)(4) by its conduct is a question upon which we need not surmise. Initially at least the employer claimed a secondary boycott was engaged in and that deliveries to Kresge would be stopped (R. 5, 8). Such result would follow from the action of neutral employees and if induced by the Union would come "within the provisions of the Act." Thus it is clear that the conduct of respondents was in effect at one and the

same time contributing to a violation of both public and asserted private rights.

In *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, the respondent alleged that the Union's conduct, as here, constituted a secondary boycott under the common law of Missouri, as well as an illegal conspiracy under the common law and state statutes. Yet this Court took occasion to reiterate its rule of the *Garner* case pointing out "that exclusive primary jurisdiction to pass on the union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board," 348 U. S. 468, 475. This Court said further that the Board had the responsibility to determine in the first instance which particular section of the Act was violated and that it was not within the competence of this Court "now to determine whether the conduct in controversy is subject to the authority of Subsections (A) or (B)." *Ibid*, p. 478.

Garner cannot be distinguished as petitioner now attempts, and as the respondent sought to do in the *Weber* case, on the ground that the controversy involved conduct prohibited for reasons other than those dealing with labor relations and that private rights had to be dealt with on an exclusive state basis. This Court has said such a distinction is not decisive:

> "* * * if the conduct is eventually found by the National Labor Relations Board to be *protected* by the Taft-Hartley Act, the State cannot be heard to say that it is enjoining that conduct for reasons other than those having to do with labor relations. * * * Controlling and therefore superseding federal power cannot be curtailed by the State even though the ground of intervention be different than that on which federal supremacy has been exercised." *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 480.

That is what the lower court meant when in its judgment it held that "initially at least," petitioner must apply to the National Labor Relations Board, for "both public and private rights are comprehended in the Labor Management Relations Act" (App. D of Petition, p. 23a).

The argument made in petitioner's Point Three that no relief could be obtained from the Board and hence it was futile to apply, which thus gave Ohio jurisdiction, is to substitute the State's judgment for the Board's jurisdiction, where the duty of primary decision lies. This is a belated argument in the absence of any attempt to invoke the jurisdiction of the Board to prevent the alleged encroachment upon petitioner's rights. See, *Building Trades Council v. Kinard Construction Co.*, 346 U. S. 933. Moreover, petitioner argued below that one reason for not invoking the jurisdiction of the National Labor Relations Board was the time consuming delay of its process and the uncertainty of result, preferring instead the more expeditious injunctive process of the State courts.

The clearest evidence of the correctness of decision and result reached below is seen in this Court's *per curiam* reversal of a judgment of the Kentucky Court of Appeals in *General Drivers, etc., v. American Tobacco Co.*, 348 U. S. 978.

The claimed basis for relief in the *General Drivers* case was not an unfair labor practice but a violation of Kentucky's common law, Constitution, and in particular a state public policy that common carriers and their employees must serve all members of the public without discrimination (264 S. W. 2d 250, 253). Yet under these circumstances this Court in reversing the Kentucky Court of Appeals ruled that state law did not furnish a basis for an injunction ordering employees of a common carrier to cross a picket line set up by a striking union at the plant

of the struck employer. The decision referring to the *Weber* case sustained the exclusive jurisdiction of the Board over conduct which, in addition to coming within the scope of the Act, likewise constituted a violation of state law.

The clear and positive answer to petitioner's arguments under Points One, Two and Three of the Petition was announced with finality in the *Garner, Capital Service, Weber* and *General Drivers* cases. The Ohio Supreme Court followed and applied law of those cases to the similar facts of the instant case and in doing so it was clearly correct.

II.

THERE IS NO CONFLICT OF DECISION.

Petitioner cannot show conflict of decision with cases which control.

Without directly charging conflict, petitioner however in Point Four urges that Ohio has decided three factual situations "not in accordance with applicable decisions of this Court" (Petition, p. 25). Petitioner claims that its right to enjoy the fruits of its private contracts of employment with its employees was jeopardized by the conduct of the Union and for which the lower court provided no remedy. Petitioner asserts the result reached conflicts with this Court's decision in *Garner* because in that case there existed a conflict of remedies as between the Federal and State statutes. Petitioner contends the Act has no remedy for breach of a private contract and hence the lower court in depriving petitioner of its injunction is in conflict with *Garner*. Submission by petitioner to the compulsion allegedly arising from the conduct of the Union would have been an unfair labor practice on the part of both employer and Union in the absence of com-

pliance with statutory authorization procedures. 29 U. S. C. 158(a)(3) and (b)(2). The Union's picketing to force achievement of an illegal contract would be a violation of Section 8(b)(2). *American Radio Association*, 82 NLRB 1344, 1345. The remedy of the Act exercised by the Board was ample to stop such coercion and prevent a violation by both employer and Union and thus guarantee enjoyment of private contractual rights.

The secondary boycott flowed in part from an alleged cessation of deliveries to Kresge presumably from pressure brought to bear upon employees of neutral employers. This was alleged to be in violation of Ohio statutes (R. 4; Page's Ohio Revised Code 1331.01). The conduct in *Weber* was likewise alleged to constitute a secondary boycott under the common law of the State of Missouri. The responsibility to decide whether such conduct does or does not constitute a violation of Section 8(b)(4) of the Act or any other particular section or provision was in the Board not the State court. Even if the conduct asserted as a secondary boycott does not fall within the prohibitions of Section 8 of the Act, it may nevertheless fall within the protection of Section 7 as concerted activity for the purpose of mutual aid or protection and which the State cannot prohibit under the guise of non-labor relations law. *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 478, 479.

The Ohio Supreme Court did not agree that petitioner's constitutional rights had been impaired. The right to engage in business, to labor freely and to contract, were not infringed, but if they were, the argument was not persuasive, since "the conduct in controversy is subject to whatever relief the Taft-Hartley Act may afford, and therefore is outside state authority," *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U. S. 511, 514. Petitioner's argument is similar to that

advanced by the employer in the *Garner* case to the effect that equity courts, which in Ohio enforce the labor relations policy as annunciated by the Constitution, legislature and the courts would enforce rights of a different category, or of a more private nature than the public rights enforced by the National Labor Relations Board. The rights involved in the instant case are no less public, more private in character or constitutionally protected than similar rights involved in the *Garner* and *Weber* cases and where this Court found that the remedy provided by the Act was ample to protect all.

There is no conflict with applicable and controlling decisions of this Court in the lower court's ruling in these three factual situations.

III.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW INVOLVED.

The judgment of Ohio does not raise a new or important question of Federal law which warrants granting of a Writ of Certiorari.

Every important Federal question involved in the instant case has been previously answered in the *Garner, Weber,* and *General Drivers,* decisions of this Court. However, petitioner attributes to the Ohio Supreme Court an error in construction of Section 14(b) of the Act which it did not make, was not necessary to decision there and presents no federal question to be passed upon here.

There does not exist in Ohio a constitutional provision, statute or public policy limiting authority to enter into union security agreements which is the equivalent of the "State law" referred to in Section 14 (b) of the Act, 29 U. S. C. 164 (b). Petitioner argues however that in *Crosby v. Rath,* 136 Ohio St. 352, the Ohio Supreme

Court established the doctrine that the execution of a labor agreement requiring membership in a union as a condition of employment was unlawful and therefore prohibited. Hence, petitioner says that the "State law" contemplated by Section 14 (b) of the Act was established in Ohio by decision in *Crosby* and picketing in support of a demand for a union shop is prohibited by a right-to-work law arising from decision in the *Crosby* case (Petition, pp. 22a, 23a).

This argument advanced here was answered by the Ohio Supreme Court as follows:

> "In the first place we believe that Section 164 (b) has reference to a constitutional provision or a legislative enactment. In the second place, if this is not so, we believe it can not fairly be said that the *Crosby* [136 Ohio St. 352] and *Anderson* [156 Ohio St. 541] cases bring Ohio within the exception contained in Section 164 (b). Those cases hold that picketing was unlawful under the precise facts there in issue, but to go further and say on authority of such cases that the firm policy of Ohio is to prohibit agreements of the kind described in Section 164 (b) is hardly tenable." (Petition, p. 23a.)*

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* On October 26, 1955, the Ohio Supreme Court decided in the case of *Chucales, et al. v. Royalty, et al.*, that the public policy of Ohio regards peaceful picketing, by non-employees, in the absence of a dispute between the employer and his employees and conducted for the purpose of pressuring the employer to compel his employees to join the union as unlawful. In reaching this result, the court expressly distinguished its previous decision in this case saying:

"* * * As this court recognized in the syllabus of the *Grimes & Hauer* case, the plaintiff therein was entitled to relief under provisions of the Labor Management Relations Act. Therefore the denial to Ohio of the right to enjoin the picketing in the *Grimes & Hauer* case (a denial implied by reason of the doctrine of pre-emption announced in *Garner v. Teamsters,*

(Continued on next page)

Thus, contrary to the assertion made in the Petition it is clear that the Ohio Supreme Court has not decided that Section 14 (b) applies "only to legislative enactments and constitutional provisions of a state" (Petition, p. 28). It concluded rather that it believed that Section 14 (b) contemplates "a constitutional provision or a legislative enactment" as establishing the kind of State law referred to in Section 14 (b). The Ohio Supreme Court does not agree with petitioner's contention that its own decisions in *Crosby v. Rath,* 136 Ohio St. 352, and *Anderson Sons Co. v. Local Union,* 156 Ohio St. 541, the two Ohio cases relied upon by petitioner, established a more restrictive limitation than that imposed by the Taft-Hartley Act upon authority to execute a union-shop agreement. The Ohio Supreme Court does not view its own decisions as so holding or as establishing state policy which petitioner would hold to be the equivalent of a right-to-work statute.

The Ohio Supreme Court has placed in proper perspective its holdings in both the *Crosby* and *Anderson* cases and pointed out that those cases are authority only

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(Continued from preceding page)

Chauffeurs & Helpers Local Union No. 776, 346 U. S., 485, 98 L. Ed., 228, 74 S. Ct., 161) would not, to use the words of Section 164 (b), be 'authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment.'

However, in our opinion, it is not necessary to determine and we do not determine in the instant case whether there is in Ohio, apart from any statutory or constitutional provision therefor, any common-law public policy which in effect establishes a 'right to work' law * * *"

The opinion concluded with this statement: "Since there is no claim that plaintiffs in the instant case were engaged in interstate commerce, the decisions in *Grimes & Hauer, Inc. v. Pollock, supra,* and *Garner v. Teamsters, Chauffeurs & Helpers Local Union No. 776, supra,* are not applicable." 164 Ohio St. 214, advance sheets, No. 34214, Decided October 26, 1955.

for the proposition that picketing was unlawful "under the precise facts there in issue." Petitioner cannot read more into the language and holding of those cases than the Ohio Supreme Court intended.

This is a circuitous effort to raise a Federal question by attempting to burden the Ohio Supreme Court with error for refusing to read into its own decisions state policy equivalent in effect to a right-to-work law. The decision here is not in conflict with *Algoma Plywood & Veneer Co. v. WERB*, 336 U. S. 301, where this Court allowed a state to forbid enforcement of a maintenance-of-membership clause in a labor agreement obtained in violation of a state statute since nothing in either the Wagner or Taft-Hartley Act forbade their regulation by the state. But in Ohio the execution of a contract requiring union membership as a condition of continued employment is not forbidden by Ohio law within the contemplation of Section 14 (b). Ohio decisions do not establish a right-to-work law. The Ohio Supreme Court agreed that this is so. Whether the demand for execution of such an agreement, supported by picketing, in the absence of compliance with statutory authorization provisions constitutes a violation of the Taft-Hartley Act is another question which has been discussed above. This is for the Board to determine. But injection of this argument concerning the construction of Section 14 (b) does not convert the correct decision of the Ohio Supreme Court, following applicable decisions of this Court, into an important question of Federal law that warrants review on certiorari.

CONCLUSION.

The decision below is correct and represents neither a conflict of decisions nor any substantial question warranting review. It is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

MORTIMER RIEMER,
THURLOW SMOOT,
514 Bulkley Building,
Cleveland 15, Ohio,
Counsel for Respondents.

APPENDIX.

The relevant provisions of the Labor Management Relations Act, as amended, 61 Stat. 136 (29 U. S. C. 151, *et seq.*) are as follows:

Rights of Employees.

Sec. 7:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title * * *. (29 U. S. C. Sec. 157.)

Unfair Labor Practices.

Sec. 8 (a):

It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this sub-chapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organi-

zation (not established, maintained, or assisted by any action defined in this subsection as an unfair l bor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159 (a) of this title, * * *. (29 U. S. C. Sec. 158 (a).)

Sec. 8 (b):

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: * * *.

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section * * *.

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring * * * any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of

such employees under the provisions of section 159 of this title: * * *. (29 U. S. C. 158 (b).)

Prevention of Unfair Labor Practices.

Sec. 10 (a):

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith * * *. (29 U. S. C. Sec. 160 (a).)

Limitations.

Sec. 14 (b):

Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law. (29 U. S. C. Sec. 164 (b).)